

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No.: 15-PM-10767-YDR |
| |) | |
| DANA ALLAN GODFREY, |) | ORDER GRANTING MOTION TO |
| |) | REVOKE PROBATION AND ORDER OF |
| Member No. 152913 |) | INACTIVE ENROLLMENT |
| |) | |
| A Member of the State Bar. |) | |

Introduction

On February 20, 2015, the Office of Probation of the State Bar of California (Office of Probation) filed a motion to revoke the probation of respondent Dana Allan Godfrey. Although he was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at his State Bar membership records address, Respondent did not participate in this proceeding. On April 22, 2015, this court issued an order submitting the motion for decision, serving Respondent with a copy of that order.

Good cause having been shown, the motion to revoke Respondent’s probation is granted and discipline is recommended as set forth below.

Findings of Fact and Conclusions of Law

On September 30, 2014, the California Supreme Court filed an order, S220200, accepting the State Bar Court’s discipline recommendation in case no. 13-O-13456, in which Respondent stipulated to failing to account, failing to perform legal services with competence, failing to communicate significant developments, and failing to obey a court order. The discipline included a one-year stayed suspension, two years’ probation, and a 30-day actual suspension.

This order was properly served on Respondent and became effective on November 30, 2014.¹ In addition, a copy of the stipulation and the Hearing Department's order approving the same had previously been properly served on Respondent on May 28, 2014.

On October 14, 2014, the Office of Probation sent Respondent a reminder letter regarding the probation conditions at his membership records address. This letter was not returned as undeliverable or for any other reason.

On December 1, 2014 and January 26, 2015, the Office of Probation sent Respondent letters regarding his non-compliance with probation conditions at his membership records address. These letters were not returned as undeliverable or for any other reason. On January 26, 2015, the Office of Probation called Respondent at his membership records telephone number, but received a message that the number dialed was temporarily unavailable. That same day, the Office of Probation sent Respondent an email regarding his non-compliance with probation conditions at his membership records email address.

Despite these efforts to make Respondent aware of the conditions of his probation and to secure his compliance with them, Respondent did not comply with the following probation conditions:

(a) Respondent was ordered to contact the Office of Probation within 30 days from the effective date of his discipline, by November 29, 2014, to schedule a meeting to discuss the terms and conditions of his probation. Respondent did not contact the Office of Probation to schedule his meeting.

(b) During the period of probation, Respondent was required to submit written quarterly reports to the Office of Probation on January 10, April 10, July 10, and October 10 of each year,

¹ In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to Respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

or part thereof during which the probation was in effect, stating under penalty of perjury that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period. Respondent did not file his first quarterly report due January 10, 2015.

Aggravation

Prior Discipline

Respondent's prior record of discipline is a factor in aggravation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.5(a).) Respondent has three prior impositions of discipline.

On August 14, 2013, the Supreme Court filed an order in case no. S211303 (State Bar Court case nos. 12-O-12875 (12-O-13567)) suspending Respondent from the practice of law for one year, staying execution of the suspension, and placing him on probation for two years, including a 30-day period of actual suspension.³ In this two-client matter, Respondent failed to communicate significant developments, failed to perform legal services with competence, failed to account, and failed to cooperate in a disciplinary investigation. In mitigation, Respondent had no prior record of discipline. In aggravation, Respondent was culpable of multiple acts of misconduct and committed additional uncharged misconduct involving his failure to promptly refund unearned fees.

In the underlying matter, the Supreme Court filed an order in case no. S220200 (State Bar Court case no. 13-O-13456) suspending Respondent from the practice of law for one year, staying execution of the suspension, and placing him on probation for two years, including a 30-day period of actual suspension. In this single-client matter, Respondent failed to communicate significant developments, failed to perform legal services with competence, failed to account,

² All further references to standard(s) or std. are to this source.

³ On March 12, 2015, the Office of Probation filed a motion requesting that the court take judicial notice of Respondent's August 14, 2013 discipline. By order dated May 18, 2015, that motion was granted.

and failed to obey a court order. In mitigation, Respondent cooperated with the State Bar by entering into a pretrial stipulation. In aggravation, Respondent had a prior record of discipline, committed multiple acts of misconduct, and caused significant harm to his client.

On February 6, 2015, the Supreme Court filed an order in case no. S211303 (State Bar Court case nos. 14-PM-03874) revoking Respondent's probation and suspending him from the practice of law for one year, staying execution of the suspension, and placing him on probation for two years, including a minimum period of actual suspension of one year and until payment of restitution.⁴ In this probation revocation matter, Respondent was found culpable of failing to timely contact the Office of Probation to schedule a meeting with his probation deputy, filing two quarterly reports late or incomplete, failing to file a third quarterly report altogether, failing to timely comply with client accounting conditions and, failing to provide proof that he made monthly restitution payments. In aggravation, Respondent had a prior record of discipline and committed multiple acts of misconduct. No mitigating factors were involved.

Multiple Acts of Misconduct

Respondent's violations of the terms of his disciplinary probation constitute multiple acts of misconduct. (Std. 1.5(b).)

Mitigation

It was Respondent's burden to establish mitigating factors. No mitigating factors were shown by the evidence presented to this court.

Discussion

The extent of the discipline to be recommended is dependent, in part, on the seriousness of the probation violation, the member's recognition of the misconduct, and the member's prior

⁴ On April 17, 2015, the Office of Probation filed a motion requesting that the court take judicial notice of Respondent's February 6, 2015 discipline. By order dated May 18, 2015, that motion was granted.

efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court concludes that actual suspension for a minimum of one year and until payment of sanctions, as requested, is both required and sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of his disciplinary probation, yet did not comply with them despite reminders from the Office of Probation. His failure to participate in this proceeding is also a matter of considerable concern to this court.

Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent Dana Allan Godfrey previously ordered in Supreme Court case no. S220200 (State Bar Court case no. 13-O-13456) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That Respondent be actually suspended from the practice of law for a minimum of one year, and he will remain suspended until the following requirements are satisfied:
 - i. He pays the sanctions ordered by the Los Angeles County Superior Court in the amount of \$500, and furnishes satisfactory proof thereof to the State Bar's Office of Probation; and
 - ii. If Respondent is actually suspended for two years or more, he must remain suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in Supreme Court matter S220200.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁵ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: May 18, 2015

YVETTE D. ROLAND
Judge of the State Bar Court

⁵Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)